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THE PROPOSED FOUR-YEAR LAW CURRICULUM:
A DISSENTING OPINION*

Philip Mechem†

A CONSPICUOUS and very wholesome manifestation today in legal education is dissatisfaction with legal education. With education in general for that matter. Doubtless the dissatisfaction begins with the general and extends to the particular. The law teacher, that is, observes that the college graduate who comes to him can barely read and write the English language, is scarcely aware that there are any other languages, is wholly devoid of intellectual curiosity, wholly untrained in hard thinking, wholly uninformed about and uninterested in the ideas which make for or against civilization. It makes the law teacher think there must be something wrong with what is euphemistically called college education. Then, if he is at all honest and clear­sighted, he begins to wonder about his own product. He observes that the law graduate still cannot speak or write good English, though he now uses slightly longer words in mis-expressing his lack of ideas—that he still wistfully believes that there is “the law” about something if the professor would only tell him what it is—that he supposes the law is divided into “subjects” the way modern highways are divided, with concrete barriers to keep you from veering off one lane and on to another going in the opposite direction—that he thinks the Constitution was adopted to protect business, and estates invented to nourish lawyers—that he has one unfailing reaction to any attempt to investigate the purposes of society and the functions of law: “it’s just theo—

*This paper is an expansion and completion of remarks made by the writer in a round table discussion of the four-year curriculum at the annual meeting of the Association of American Law Schools in Chicago in December, 1939, and printed in Proceedings of the Thirty-Seventh Annual Meeting, pp. 112-116. An extensive bibliography on the four-year curriculum will be found in the report of the Committee on Curriculum, ibid., pp. 189-193.

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Perhaps, it is borne in on the law teacher, there may also be something wrong with legal education. This, be it repeated, is very wholesome, and it has led to some very wholesome self-examination in law-teaching circles, ranging in scope from the painful midnight wakefulness of the individual teacher to solemn and organized investigation of curricular and teaching problems by the Association of American Law Schools. One outcome has been a great number of different suggestions for reform, some of which have actually been put into effect at least experimentally in various schools. The most common subject of attack has been the law-school curriculum, there seeming to be rather wide-spread agreement that existing curricula are unsatisfactory. There is, however, much less agreement as to what is wrong with them and what should be done about them. Lately the proposition has been advanced in certain quarters that the curriculum needs to be extended, specifically that a four-year curriculum be substituted for the three-year one which has been standard for so long. Several important schools now offer (or are preparing to offer) such a four-year curriculum, either exclusively, or as an alternative to a three-year curriculum.

A difference in the proposed curricula should be noted. Some presuppose no change in the time now devoted to pre-law school study; thus a year will be added to the time it takes to get a law-school degree. Others (and probably a majority) contemplate a shortening of the pre-law school study by a year so as not to increase the sum total of time. These two types of plans may be described as three-four plans and two-four plans, respectively. The difference is obviously a very important one, from the practical standpoint; it makes it to some extent both difficult and unfair to discuss the four-year proposal as one proposal. The writer believes, however, that the difference is not one likely to persist. The four-year program is inherently an expansionist program; the assumptions on which it rests are inherently expansionist assumptions; no one, aware of and sensitive to trends in legal education, can have much doubt that there is a trend towards expansion and that the two-four plans will almost automatically grow into three-four plans.

These proposals are plainly of the greatest importance, not only to the law-teaching group but to the whole law profession and indeed to the public as well; no one can doubt that the expense and the success of legal education are two matters vitally affected with a public interest. Many of the arguments advanced in favor of a four-year curriculum are highly appealing and at least superficially convincing. The writer nevertheless believes that careful examination will suggest that the
proposal rests on insecure foundations, that the assumptions underlying it are unproved if not definitely false, and that its implications and probable consequences are unfortunate and perhaps even pernicious.

Fundamentally, the proposed four-year curricula are all based on two propositions; their differences (notably the difference between the two-four and the three-four plans) arise only from the varying extent to which they stress one or the other. These two propositions may be stated thus:

(A) New or newly important subjects, such as trade regulation, labor law, administrative law (and perhaps newly discovered or newly fashionable subjects such as jurisprudence and comparative law) must be put into the curriculum; their addition to an already overcrowded curriculum must necessarily involve lengthening it.

(B) The adequate professional training of a lawyer includes a group of related but not technically legal subjects which may be loosely and unimaginatively but conveniently referred to as the social sciences, such as sociology, psychology, economics and the like; these subjects are not and cannot be adequately taught in the lax intellectual climate of the college but must be taught in the more stimulating climate of the law school if the prospective lawyer is to be adequately grounded in them; their addition to an already overcrowded curriculum must necessarily involve lengthening it.

To these two propositions the present writer would submit two answers:

(1) Both of proponents' propositions rest on the assumption that the present curriculum is overcrowded. Properly used, the phrase implies more material than can be handled. In this sense, the assumption is untrue. The existing curriculum is, if you like, swollen and misshapen—but not overcrowded. Its condition is not due to too much material to handle but rather to handling it badly, a mishandling that results from certain factors in law school doctrine and practice that will be separately and specifically listed below.

(2) It is at least unproved that the colleges could not give prospective law students adequate training in the social sciences if the law schools would (a) reach an agreement on the sciences to be mastered, (b) cooperate with the colleges instead of just criticizing them, and

1 This is not the place to debate what subjects should be included nor what title, if any, appropriately describes them all. There seems to be dispute among the proponents on both these points. The term "social sciences" has been, although perhaps inaccurately, e.g., as to psychology, used simply for convenience to denote whatever subjects should ultimately be thought worthy of insertion in the curriculum.
(c) insist, preferably by examination, on proof of familiarity with the subjects named as a prerequisite to admission to law school. It is likewise unproved that the introduction of non-professional studies into a professional school might not so much tend to raise the quality of non-professional study as to lower the quality of professional study. And if both of these assumptions could be proved, it would still be doubtful whether law schools ought to take a step involving such a certain increase in the cost of teaching the social sciences, because of the duplication of personnel involved. Moreover, such a step might logically lead to a much more drastic increase, since it is hard to see why the claim that non-legal subjects be taught in the law school, if valid at all, is valid only as to the social sciences and might not (and would not probably) be extended ultimately to nearly all the subjects included in what has hitherto been regarded as the general education of the lawyer.

I

WHAT IS REALLY WRONG WITH CURRICULA

The writer would list the following as the factors chiefly responsible for the present unsatisfactory state of the average law school curriculum:

(A) A laissez-faire attitude on the part of law teachers, which has discouraged any attempt to frame an integrated and intelligently thought out curriculum and has led on the contrary to a curriculum which is largely the result of accident and purposeless drift.

(B) The elective system, which tends to the reckless multiplication of courses.

(C) A growing guild or trade union consciousness in the law teaching profession, which tends to foster the idea of law study as an end in itself and which works subtly and constantly towards an unneeded increase in the time, money and personnel devoted to legal education.

(D) Infatuation with the case method and insistence on using it to the exclusion of everything else.

(E) Large classes, which decrease effectiveness of teaching and also diminish the pressure that can be brought to secure good preparation, particularly from the lazier and less intelligent students.

(F) The division of the curriculum into subjects and the teaching of them by experts with its resulting tendency (from the standpoint of the curriculum) towards disintegration rather than integration and towards expansion and wastefulness rather than efficiency and economy.
A, B, and C. How Curricula Grow: Laissez Faire, the Elective System and the Guild Spirit

The proponents of the four-year curriculum are urging the abandonment as unsatisfactory of something that has in fact never been tried. We have, I believe, no information as to the workings of a good three-year curriculum. By a good curriculum I mean one carefully thought out and planned as a whole, one based on a survey of present-day law, one attempting to put into effect some intelligent philosophy of the methods and purposes of legal education. It is scarcely an exaggeration to say that existing curricula are not the result of planning or thought at all. The planning was done sixty years ago, well and intelligently done, no doubt, in the light of then existing conditions and points of view—since then there has been no more planning, simply patching and usually not even intelligent patching. Everyone is familiar with the processes by which curricula get modified from time to time. A very conspicuous one has been by the invention of new courses. This is, as such, natural and desirable. New fields of law have emerged, or existing but relatively limited and unimportant ones have taken on new scope and importance. Casebooks and courses have, very reasonably, followed. What has not followed, however, has been a careful study of the curriculum in the light of this new material to determine how it may be introduced without upsetting the general balance or adding to the sum total. Instead, the new material has just been dumped in. Thus the painful process of thought and the even more painful process of cutting something out of the curriculum to make way for the newcomer have been avoided.

A word on the elective system seems necessary here. It is hard to say whether the elective system is the cause or the consequence of the lack of thought which has characterized curriculum-making. It is easy to say, however, and quite obvious, that there is little justification for the elective system in a law school. In rare cases election serves a real need. The student, for example, planning to practice in Oklahoma may need what the student planning to practice in Massachusetts does not—viz., a course in oil and gas law. The student planning to enter his father’s extensive corporation practice may need more study of

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2 This statement, believed wholly justified as to the generality of schools, is no doubt unfair to a few. New curricula are in effect at Columbia and Harvard; very elaborate studies and revision are under way, as the writer happens to know, at Michigan, Ohio State, and doubtless elsewhere. The writer is glad to assume that this work has been done in the spirit described as necessary and that it has produced or is producing curricula not subject to the criticisms made herein.
corporation finance than the student planning to enter a rural general practice. Few, however, would be reckless enough to challenge the statement that not once in ten times does a student make an election on what might be termed meritorious grounds. Favorite instructors, favorite hours, current student prejudice as to what is "practical"—these, as all law teachers know, are the bases on which elections are made. How could it be otherwise? How can law students be expected to know what subjects will make up the best-rounded and most intelligently chosen course? The writer has sometimes heard teachers defend the elective system on the ground that it does not make any difference what courses a student takes since they are all good "mental training." This, quite aside from the admissions involved, is faulty reasoning: if all courses are equally valuable, why waste money giving courses some of which must be, ex hypothesi, unnecessary? In many cases the result must be to use up money that can ill be afforded. Even if relatively large funds are available, there is no justification for using them in a way inherently wasteful. Funds available for expansion should be employed in some constructive and useful way, as e.g., in sectioning large courses and increasing the number of seminar courses and the like.

Probably the real reason for the prevalence of the elective system in legal education is that suggested above, to wit, that it is a way of escape from the necessity of hard thinking and unpleasant choices. Professor X will definitely and bitterly resent it if we take two hours off his favorite course to make way for the new two-hour course Professor Y wishes to introduce into the curriculum. Everyone else on the faculty will resent it as a dangerous precedent. Whereas, if we have the elective system, it is as easy as possible just to add the new course, take nothing away, and put on the unfortunate student the burden of deciding which of all the dozens of courses offered are really essential to a good legal education. In the same way more time can be added to existing courses. Every teacher wants more time for his favorite course and is always on the alert for some curricular readjustment which will permit him to turn over a distasteful course to a younger colleague and add the hours thus freed to his favorite.

Thus the elective system becomes a conspicuous factor in the process by which a curriculum, originally (many years ago) thought out as an integrated whole becomes a swollen and shapeless thing in which no form nor organization can be detected and which has no underlying, unifying idea (save the usually unexpressed one that legal education is a fine thing of which we could scarcely have too much, so that the
more students and professors and courses a law school lists in its catalog, the greater law school it must be). In time the swelling becomes so extreme and so apparent that a solution must be sought. Two suggest themselves. The first is an honest one: think out the curriculum afresh, after a careful study of and formulation of objectives; strike out excrescences and overlappings; test every hour, not in the light of some expert’s urge to explore every cranny of his favorite subject but in the colder light of what a beginning lawyer needs to and may be expected to know.

Unfortunately, if this is an honest solution, it is also an arduous one. It takes hard work and wisdom, cooperation, a high degree of intellectual honesty, it presupposes a faculty or a committee or a dean that is open-minded, widely informed, and ready to sacrifice cherished individual, vested interests to the common good. Such a solution is not very likely to be the one adopted. Instead, recourse will be had to the much easier and pleasanter alternative, which is to make a few minor changes and excisions to show good faith—and then extend the curriculum: this permits extending existing courses, letting in new ones, hiring new men (if the budget difficulty can be surmounted, as it usually can be where such a great “advance in legal education” is the objective) and generally adding to the individual and collective place in the sun; everybody is happy—except, of course, the poor devil of a law student who finds himself being sacrificed to the laziness, the incompetence and the selfishness of those who are supposed to be his betters.

In making such a statement the writer wishes to be careful to make a distinction about motives. Many of those advocating the four-year curriculum are persons whose integrity is above suspicion and who command the respect and admiration of the profession, a respect and admiration in which he gladly concurs. Everyone is familiar, however, with the kind of guild prejudices and reactions that grow up in professions and make the members quite unable to see certain things that are tragically plain to everyone else. Procedural reform is always fought bitterly by lawyers—always with the best motives. Lawyers, who as individuals would not beg or steal, take it as self-evident that they do and should have a lien on the public wealth, to be enforced whenever people quarrel or die. A similar guild feeling is beginning to be very apparent in the teaching profession, a feeling that legal education is a good thing as such, that every increase in the time, money and personnel devoted to legal education is a public benefit, and that the law teacher has just as valid a lien on the public wealth as his brother,
the practitioner. No one who has ever been a member of a law faculty is unfamiliar with what may be called the basic platform of legal education: more members for every faculty, less hours teaching for every member—although most schools already offer more courses than any student can take and in some schools the teaching load has been reduced beyond the point where it can reasonably be thought that law-teaching is a full-time job. An impartial, objective appraisal of the place of legal education in the social scheme would suggest something like this: legal education should be always a means and not an end; it should be as brief and inexpensive as is consistent with giving an adequate preparation for the practice of law. In the latter connection, it should always be kept in mind that no way has been discovered of teaching the practice of law and that the most that is done by so-called legal education is the teaching of a doctrinal discipline which it is hoped will be a good preparation for the learning to practice law which must be done after the student leaves law school. This should be a sobering thought; it should suggest long and painful reflection before talking of extending a process that is not a proved success but rather a groping if hopeful experiment. Perhaps the reflection proves too painful; there is no sign that it goes on, and it is to be feared that a sedulous listener-in at law faculty keyholes would get the impression that the purpose of legal education is to furnish a pleasant and profitable career for law teachers.

These digressions, it is believed, are not really far off the path. The present curricula cannot be appraised without reference to its history, the elective system without which it could not operate, and the existing climate of academic opinion without which it could scarcely flourish.

So much for the way curricula are made—or, one is almost tempted to say, the way they multiply, since the process is less one of creation than of a kind of curricular parthogenesis. Attention must now be directed to a very important retarding factor in the legal education process.

D. The Case Method

No one would deny the great merits of the case method as a way of achieving certain ends; the mistake has been in assuming that those ends were the only ones involved in legal education. The case method is the method by which our law has been built up; it is the natural way for studying the process. Doubtless it is the best way to study the fundamental, underlying ideas and doctrines of our law. Nevertheless, the understanding of our legal system and its main doctrines is not the only purpose of legal education.

It seems clear that students of graduate rank, carefully chosen as
law students are supposed to be, working full time under competent instructors, could in a year master both the technique and methods of our case law and its main substantive doctrines. That they should learn these techniques and doctrines is a proposition about which there is likely to be little dispute—perhaps the only such proposition in all legal pedagogy. What else they should try to learn is a question of infinite dispute. All the substantive doctrines of our law? Life is too short for that; not even the greatest judge is expected to know them all. A selected group of what are supposed to be the most important or the most typical or the most modern or the most litigated doctrines? A study not of doctrines at all (or primarily) but rather of law in operation, law and society, or what might be called, in the broadest possible sense, jurisprudence? The choice of one or two subjects and a complete investigation of their least known ramifications?

Whatever theory be adopted, it seems unlikely that the case method of study should be the one employed. That, properly employed in small classes (as to which, see infra) will have served its purpose in the first year. There, its inevitable slowness, its requirement of much winnowing for a little grain, are not objections, but the contrary. The object is precisely to see what is involved in a system of law which rests in large part not on authoritatively stated precepts but on a body of doctrine built up only by decided cases and to be discovered only by the patient analysis and comparison of decided cases. What is gained by such a system, in realism, in flexibility, in fitting law to facts rather than facts to law, in utilizing the accumulated wisdom of the judges who have gone before—and what is lost by such a system in the unwieldy bulk of the sources of law, in the fact that law is as likely to be made by stupid and inexperienced judges as by wise and experienced ones, in the confusion that must result from decisions that are obscure or conflicting, in the time spent searching for authority, in the tendency of old doctrine to persist after the factors that gave it validity have ceased to exist—and what kind of rules of law such a system discovers or invents—these exactly are the subjects of inquiry best studied by that experimental repetition of the process itself which we call the case method of study.

After the first year, other objectives should be sought and other methods adopted. There is that growing part of our law based not on decision but in statute; it is no necessary conclusion that a method based on case law is ideal for the study of statute-making and enforcement. Again, it is preposterous to assume that there are no facts about the judicial process that need to be mastered; equally preposterous to
assume that the only honest way of learning facts is to grub them out for one's self laboriously and by hand by the endless reading of cases. Probably in no other learned discipline does the gospel obtain that the inquiring traveler has to learn to walk all over again every time he takes a trip. Here strong and inveterate prejudices are met; it is heresy to doubt the case system and mortal sin to "lecture"; nowhere else do totem and tabu rule so rigorously and so completely stifle objective study of the questions: what are we trying to do and what is the most effective way of doing it? One of the very first things such objective study might disclose would be that teaching by lecture and text is by no means necessarily dishonorable but is on the contrary very successfully used in disciplines of undoubted integrity and scholarship. It might even disclose the disquieting fact that law teachers are often in fact employing the lecture method, without admitting (or perhaps even realizing) it, since it is one capable of successful use in large classes, whereas the true case method (as pointed out in the following section) is not likely to be employed successfully except in small groups.

The writer is not here attempting to propose a reformed curriculum in detail, and the devising of methods would have to await the framing of the curriculum. It would seem safe to say, however, that three forms of instruction, either rare or nonexistent in present-day curricula, should supplement the case method as ordinarily practiced: (1) intensive individual research on one or more special problems under careful but not too much supervision; (2) text study of the elements of certain subject matters not thought to be sufficiently fundamental to merit case study in the first year yet regarded as important to the background—this is to be done, perhaps in classes or perhaps to be a matter of private study checked by an examination; (3) something in the nature of laboratory work—perhaps supervised investigation of the operation of police courts or divorce courts or receiverships—perhaps participation in legal aid clinics—perhaps both.

E. Large Classes and Small Efficiency

It has been said above that the techniques and main doctrine of the law should be mastered in the first year. Many will clamor: they are not being so mastered now! True—because while we profess undying, not to say pig-headed, loyalty to the case method, we proceed to apply it in a way in which it will never work, that is, in large classes where the bewildered student spends his entire first year without ever grasping the method he is supposed to be utilizing.
The case method is properly speaking a method of study. It assumes a rather superior intellectual performance, in which individual cases are studied acutely, and then compared no less acutely with previous cases that have been studied, all to the end of divining a pattern and building up a picture of a body of law or of a segment of the judicial process, as the individual taste prefers to phrase it. This assumes not only a rather superior intelligence but a willingness to do hard thinking, which is ordinarily the most distasteful of all forms of hard work. The comment might be added, to what has already been said about the case method, that it may require more ability and character than the average student possesses. Be that as it may, it is certainly not one that is naturally congenial to the average mind; it needs careful and patient teaching. And it is not one that gives a modest reward for a modest effort; it gives none at all, resembling a parachute in that almost making it work will not do. The stupid or lazy student going through a text may get something, when reading cases with the same degree of efficiency would simply confuse him.

It is doubtful if the use of the case method in large classes does much good except to the minority that is keen and anxious to work. The other members of the class sit back inertly. The likelihood of being called on is not enough to coerce them to do the hard work of really reading, understanding and comparing the cases; they are in fact not often called on and so are not forced to go through the mental motions which might become instinctive if there were sufficient drill in them. Listening to others go through the motions is not enough, even if they did listen—and all teachers know that they do not.

Theory and experience (the writer's experience, at least, and he has encountered others whose experience has been the same) thus both suggest that only through teaching in small groups can the pressure (to prepare properly) and the training (in case-method thinking) be secured which is essential to the successful operation of the case method. And yet in most schools so-called case-method teaching is carried on in classes of seventy-five, and a hundred and fifty, and two hundred.

Apologists for the elective system sometimes use the argument that it tends to reduce the size of classes. No doubt it does, to some extent—but certain comments need to be made: (1) the reduction is not systematic or universal but spasmodic and accidental; (2) small classes are found where they are least needed, i.e., in the less popular courses; (3) almost universally there is no election in first-year courses, and as a result first-year courses tend to be the largest although it is pre-
cisely in his first year, when he is forming his mental habits, that the student most needs the careful instruction that can only be given in small groups.

An obvious conclusion would seem to be that the elective system should be largely abandoned and that the extra teaching hours thereby made available should be employed in teaching the first-year class in small groups, thereby giving to the lower ninety per cent of that class for the first time some opportunity of really knowing what this case-method business is all about and perhaps of even trying it.

F. The Expert Complex

Obsession with the case method and with teaching in large groups can no doubt properly be regarded as in large part a rationalization. Case-method teaching is pleasant, it involves a technique which once learned can be used in any subject, it shows off the teacher to advantage if he is quick on his feet (and the bigger the audience the greater the advantage), it is the method by which we were all taught and with which we are all familiar—ergo any other method is quite unthinkable. The attitudes and reflexes of the “expert” may be another strong factor here. The contemporary law school personnel is largely made up of experts—men who specialize in one or two subjects and have, or purport to have, vast, detailed information about these subjects. Such men markedly condition curricula. They are naturally anxious to teach all they know, to foster and build up the subjects with which their names are identified. Case-method teaching suits them very well. The idea that the student might learn enough for the purpose of his prospective practice by a carefully planned one-hour-a-week survey of the subject to which they have devoted a lifetime fills them with horror and rage. On the contrary, nothing but an extended and detailed study of the whole subject can possibly fit the student for the practice, and the best way to be sure that the study of a subject will be extended and detailed—not to say protracted—is to study it by the case method.

This suggests and explains the third way in which the existing curriculum is subject to criticism: that it is departmentalized, that it is an unintegrated group of independent, sometimes cumulating and sometimes competing courses. In a way, to be sure, this is just a repetition of the charge that existing curricula are unscientific and unplanned, but it does stress a special point: the way in which experts, each primarily interested in fostering the study of his own specialty, tend to make the curriculum heterogeneous and by the same token unnecessarily long. A good curriculum might make scant allowance for “subjects” in the
ordinary sense; it might be divided into such categories as "Legal History" and "The Method of the Common Law" and "Brief-Making and Argumentative Technique" and "Comparison of the Methods of the Common and the Civil Law" and "Office, Trial and Appeal Procedure" and "Statute Making" and "Courts and Administrative Tribunals Contrasted" and "The Relation of Tort and Contract Concepts," etc., etc. But in the way of any such conceivable plan of procedure, which would see the law as a single subject of study to be examined from various angles and in shifting lights, stand our existing curricula, devoted to forwarding the interest of experts, and treating the law as simply the sum total of thirty or forty subjects. By the same token any attempt to keep the scope and duration of the curriculum within reasonable bounds is made difficult in the face of a process in which the curriculum is a constantly rolling snowball, building itself up both as the experts learn more about their favorite subjects and as new subjects and new experts to promote them come into existence.

II

The Place to Teach the Social Sciences

Certain preliminary questions and reservations need expression. For example, there is a school of thought which would say that what the legal profession needs worst is more civilized gentlemen in it and that the studies of the prospective lawyer, aside from the strictly technical ones, should be those tending most to a mature and civilized view of life, such as literature, music, art, philosophy, languages, and history. One can (this school would hold) learn one's economics and sociology (and even one's law) in later life as one goes along and needs to—but any solid grounding in the things which are needed to make a man worthy to practice the profession of Justice must come before professional studies are begun if it is ever to come. Another school would be inclined to question the ultimate merit of what is contained in the non-legal studies most commonly urged. Are there findings of proved validity in sociology, in economics, in psychology and semantics? The life expectancy of a brand of psychology appears to be four or five years, and some of the others are definitely poor risks. Both schools of thought are supported by the fact that law teachers have never been able to agree either on the need for or the essentials of a pre-legal curriculum. The suggestion that a standardized pre-legal curriculum be set up and required has often been made but never carried out, for the quite simple reason that many have felt strongly that the pre-legal work of law students should not be dictated, and others, while agreeing
that there should be a required pre-legal curriculum, have not been able to agree on what it should contain. The four-year proposal, on the other hand, seems to assume that some agreement as to what are the essential non-legal materials exists, or at least is possible. Quaere, how far such an assumption is justified.

Finally, if the law student needs non-legal materials, why not incorporate them in the courses where they are pertinent? This is, in fact, one aspect of some of the four-year proposals—always with the express or implied conclusion that such an incorporation would necessitate lengthening the courses and so the curriculum. For example, the course formerly known as “Domestic Relations” but now enjoying a new vogue under the name of “Family Law” should include material, perhaps not on the care and feeding of children, but at least on the causes and cures and consequences of divorce, the psychology of sex, the anthropology, sociology and what-not of the family, and so on. Obviously, it is said, this will take more time. At first blush this seems so self-evidently true as to make it folly to challenge it. Then doubts suggest themselves. To what extent can such subjects be studied as part of a course on domestic relations? Each one is a subject in itself; to suppose that it is intended to make a complete study of each is out of the question; the resultant course would take all the student’s time. After all, it has to be assumed that common sense is involved in these proposals, that we are still talking of training lawyers, albeit better ones, and are not setting up a scheme for turning out a graduate who is an expert sociologist, economist, psychologist, anthropologist, political scientist and lawyer all at once. If anything so grandiose as that is the objective, the present writer would not think it worth bothering to make any comment at all. The rational assumption is that only certain carefully-chosen, expertly digested and compacted materials that are essential as background material to a proper study of the legal problems involved are meant to be included. If so, it need by no means follow that the consequence would be an extension of the teaching time necessary. On the contrary, the result might be so to facilitate discussion and comprehension of the legal problems as actually to shorten the gross time involved. In one instance of using a book containing a considerable amount of non-legal materials the writer has found that they definitely increase the number of casebook pages covered per hour; being for the most part background material, they require no discussion and at the same time speed up the discussion of the cases by furnishing bases about which there must otherwise necessarily be a protracted but amateurish discussion. That this would necessarily prove true, the writer by no
means wishes to assume, but rather that he has found it true in one instance and that it seems likely that it might in other instances.\textsuperscript{8}

In any event, as a matter of practical curricular technique, several things appear to be true: (a) the method described above is the obvious way to incorporate non-legal materials, if they are to be incorporated; (b) the curriculum should be extended to take care of them only after they have been introduced and thoroughly tried out and it has been found to be a fact that they do necessitate an extension of time. It should not be extended on the basis of an hypothetical increase in time necessitated by the use of hypothetical non-legal materials. It has been very conspicuous in the furor about non-legal materials that there has been great talk but little performance. It would seem a reasonable order of procedure for those who believe so firmly and so vocally in the use of non-legal materials to produce them and not just talk about them, to prepare casebooks (or other teaching devices) in which they are incorporated so that the rest of the world may have actual experience with this great improvement. If this is done, and the non-legal materials have the value claimed for them, their adoption will be automatic and occasion no need for debate; in the same way it will appear whether and to what extent they need and deserve more time. That exactly the reverse of this process is being asked for—that the cry is “give us more time and then we'll produce some non-legal materials”—seems to justify considerable suspicion.

We now proceed to consider the form which the argument for non-legal materials more commonly takes, the form we have regarded as basic—that courses on these subjects be made a part of the law school curriculum. The argument for this, already suggested, may be expanded as follows: ordinarily students study psychology, sociology, economics and so on in the debilitating intellectual climate of the undergraduate college and with nothing to stimulate their interest in these subjects nor to make them seem particularly pertinent to the student’s career. It is, accordingly, not strange that their study of these subjects is superficial and perfunctory, and the results largely forgotten by the time the student gets to law school. Why not postpone these studies until the student is in law school? Let them be timed to coincide with law courses where knowledge of the particular non-legal material is important, perhaps vital. The student will then naturally be stimulated to a zealous and not a perfunctory study of the matter at hand. And in addition he will be subjected to the stimulating

\textsuperscript{8} A similar experience is suggested by Professor Llewellyn, “On What is Wrong with So-Called Legal Education,” 35 Col. L. Rev. 651 at 671 (1935).
intellectual climate of the graduate school which will further make for an earnest and industrious study of these subjects.

No one can deny the plausibility of this. It is by far the most persuasive of the forms which the demand for a longer curriculum has taken. However, it is believed that such an argument has implications which need to be thoroughly explored and which the proponents have not quite faced.

A. Have Law Schools Really Tried to Improve Pre-legal Education?

It is easy to criticize the work done in the colleges, and law teachers have been very prone to criticize it. Law teachers, though, are vitally interested in the calibre of work done in the colleges; have they interested themselves, not simply in criticizing it, but in trying to raise it? No one can doubt that professional schools have considerable power to affect college standards, both by cooperative methods and coercive ones, yet there is little evidence that law teachers have gone much beyond criticism, often very supercilious, ill-bred and quite ignorant criticism.

Investigation should be the first step. What is the truth about college training in the social sciences? Is the fault with the students, the teachers, or the subject matter? Are the men who learn little in college perhaps the men who learn little anywhere and would persist in learning little in spite of any methods that could be devised? Are we faced with perhaps only another manifestation of the result of "democracy in education," that is, of insisting on educating not only the minority who are capable of being educated but the majority who are not? Can we be sure that it is only the college climate that is debilitating when we see the president of a large western university quoted in the press as saying that the idea of a university without football is "utopian"? These and other questions need answering before we take an important step based on the idea that the social sciences are badly taught in college and would be wonderfully taught in law school.

Something might be achieved by cooperation. At present law schools will scarcely tell colleges what subjects pre-law students should take; such a decision made and announced, colleges might be able to set up special sections of certain courses, exclusively for pre-law students, perhaps special courses. In such courses or sections (so hope would have it) higher standards would automatically prevail. A joint study of objectives might be helpful to both parties; a careful statement from law schools of particular deficiencies in pre-law education might disclose some not incurable but simply unsuspected ones.

More could be obtained by coercion, that is, by an effective insistence on proof of adequate training in the social sciences as a pre-
requisite to admission to law school. And by no merely theoretical insistence. Law schools, particularly the privately endowed ones, are everywhere experimenting with methods of selecting students; some give aptitude examinations to candidates. Why not entrance examinations in the social sciences, framed and graded with sufficient severity to exclude those who cannot evidence a genuine knowledge of the specified disciplines? Law schools, ordinarily rather ruthless at the end of the student's first year of study, should have no difficulty in instituting strict examinations. If outside proof were needed, the experience of the civil service, of accountants, and others, shows that high qualification standards can be enforced by examination. Several desired objectives would be obtained at once. Law schools are always complaining of the low quality of bar examinations and examiners, and urging that the flood of lawyers be dammed at that particular level. Why not start higher upstream? If education in the social sciences is more important to the prospective lawyer than his general education (as the four-year plan assumes), it should follow that an examination on these sciences would afford a better way to pass on the qualification of candidates for admission than any yet devised. Such examinations would thus raise the standard of lawyers, gain for law schools a desired end without elaborate and expensive extension of their own facilities, and, at the same time, be tremendously helpful to the colleges in their effort to raise their own standards.

B. Whose Standards Would be Affected?

The four-year plan assumes that by teaching sociology in the law school we automatically guarantee more interest and effort on the part of the student than is possible in a college course in the same subject. This is a pleasing assumption, flattering to law schools, and at least superficially plausible, but is there any evidence to support it? Doubtless there is no exactly relevant evidence available either way, but certain observable facts in law school practice tend not to support the assumption. Every law teacher who has attempted to teach jurisprudence or any course of that general nature knows quite well that the interest and zeal of law students does not rise automatically because a course is offered in law school. Jurisprudence is a "theoretical" subject wherever it is offered, few law students will take it unless forced to, and those who do take it on the whole bring to it a wholly different attitude than they bring to the "practical" courses they so much value. In all probability law students will react in the same way to sociology and psychology in the law school. "You can't fool us," they will say, "this isn't the practical stuff you need to pass bar examinations; this is
just that same old cultural stuff we got in L.A. Probably it's intended to be a snap course so that we can put more time on the practical law courses.” If it be suggested that such language does not assume a very intelligent law student nor one with motives of a high order, the answer is plain: there is no evidence that law students in general are very intelligent nor that their motives are of a high order. No doubt the minority of highly intelligent and enlightened law students would take warmly to sociology and psychology in the law school; perhaps they would get more from it there than elsewhere. Unfortunately, the attitudes and behaviour of the minority of highly intelligent and enlightened law students are wholly irrelevant to the matter under discussion. That minority will always get a good education, professional or otherwise, because it craves it, knows it when it sees it, and searches until it finds it. The problem of legal education (and of every other sort of education) is to find a way of making average minds into good ones.

Caution seems in order here; it would be rather a sorry joke on law schools if the effect of bringing the social sciences to the law school was not to raise the standard of social science teaching but to lower the standard of law school teaching.

C. Where Would It Lead?

Several more or less related queries about the proposal to teach the social sciences in the law school may be added:

Can professional education afford to assume such an attitude? Can it afford to say in substance to the undergraduate branch of education: we think your performance so contemptible that we are preparing to ignore it entirely and take over your job? There is no reason for thinking the problem is one solely facing law schools. Other graduate disciplines can doubtless with equal validity claim to take over the preliminary education of their students. The result will be an extraordinary expansion of the field of graduate education and a decentralization and duplication in the educational process generally which is bound to increase enormously the cost of education. One may ask: why limit it to sociology and economics and accounting? Are there not even more fundamental things in which lawyers need grounding and which, if the premise be sound, should be taught in the sturdy intellectual climate of the graduate school? Sound and effective use of the English language, for example. The physical sciences, which figure so large in the world in which the lawyer is practicing. History, ancient and modern, particularly American and English, and a working knowledge perhaps of an ancient and certainly of several modern languages, so that the lawyer may read understandably the wealth of jurisprudential literature not available in English. These are surely more important
items in the lawyer's education even than psychology and Max Weber; if the law school is really to take over the education of lawyers, why do it in a half-hearted and incomplete way? Why stop at a four-year curriculum, which is plainly just a timid beginning? If the Jesuits are right, the boys' (or girls') legal education should start before they are four, and the early years, it is said, are the all-important ones.

A final query: where exactly in the lawyer's education do the non-legal materials belong as a matter of effective educational practice? Mention has been made of the suggestion that non-legal materials be incorporated in law school courses and casebooks. Such a plan seems to suppose general courses in the social sciences given before law school rather than in law school. If the non-legal fundamentals have been properly mastered before the student enters law school, it leaves the way open to including in the law courses just that carefully-chosen and relatively advanced material particularly pertinent to the law under discussion. This would make a natural and practical division: fundamentals in the college, presenting an orderly general view of the subject (and hoped to form a part of an orderly general view of society); pertinent special advanced applications in the law school to facilitate and color the study of the branch of law involved. The other division, on the contrary, is neither natural nor practical; if the student is to take a general course in economics in the law school, he should scarcely spend time taking another in college—and yet the course offered in law school is hardly likely to serve all the purposes that need to be served. It is neither likely, that is, that the law instructor teaching economics would be inclined to pay much attention to the parts having no particular legal significance—the tendency would obviously be to stress those parts of the subject where the liaison is conspicuous—nor that the senior law student would pay much attention if he did. Yet it seems that somewhere the law student should have a good general course in economics.

The four-year curriculum may be coming. The present writer would not be rash enough to predict the contrary. It has a host, apparently a growing host, of advocates. Many plausible and appealing arguments can be made for it. It is surrounded by what in the day's terminology might be termed glamour. Precisely therein lies its danger. If so radical and so costly a change is to be made in the legal educational process it should be made not light-heartedly and for the fun of it, but only slowly, cautiously, and, in particular, after a more sincere, searching and intelligent effort than yet has been made to discover if the objectives cannot be attained without extending the period devoted to legal education.